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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,721	08/20/2003	John G. McCarthy	10020842-1	8101

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HEWLETT PACKARD COMPANY
P O BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

EXAMINER	
PATEL, NIKETA I	
ART UNIT	**PAPER NUMBER**
2181	

MAIL DATE	DELIVERY MODE
09/21/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/645,721	MCCARTHY, JOHN G.	
	Examiner	Art Unit	
	Niketa I. Patel	2181	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 June 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6,8-15 and 17-25* is/are pending in the application.

4a) Of the above claim(s) *12-15 and 17-25* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6 and 8-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *22 August 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Papers Submitted

1. It is hereby acknowledged that the following papers have been received and placed of record in the file: Claims and Applicant Arguments/Remarks as field on 6/26/2007.

Response to Arguments

2. Applicant's arguments filed 6/26/2007 have been fully considered but they are not persuasive. Applicant argues that (1) the Labbe et al. U.S. Patent No.: 7,158,938 b2 (hereinafter "*Labbe*") does not teach the limitation of "reservation time period being determined based on a command type of the device command" at page 6 of the remarks, (2) there is no suggestion/motivation to combine Cheng U.S. Patent Application Publication Number: 2003/0005130 A1 (hereinafter referred to as "*Cheng*") and *Labbe* at page 7 of the remarks, (3) Examiner's reasons for combining *Cheng* and *Labbe* is defective since both of these reference are directed to completely different inventions at page 8 of the remarks and (4) examiner is performing an improper piecemeal construction that uses hindsight to arrive at the claim elements, at page 9 of the remarks section.

The examiner respectfully disagrees with these arguments.

As per the first argument, *Labbe* clearly teaches the limitation of "reservation time period being determined based on a command type of the device command" at column 6, lines 20-33 and figures 1 and 2. *Labbe* teaches some very large and difficult

jobs are scheduled to be processed for low machine demand hours, for example for late afternoon or evening hours. In such cases, the system requires that user attempting to reserve machine time slots (i.e., device reservation time) provide job information for example the type of job (i.e., command type), and the job order quantity. Furthermore, applicant has not made specific arguments pertaining to why one having ordinary skill in the art would not have construed the 'machine reservation time slots based on job type' of *Labbe* to read on the applicant's 'reservation time period being determined based on a command type of the device command.' Without such arguments, examiner cannot respond and is not persuaded by such argument.

As per the second argument, the recent Supreme Court ruling on KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385 (U.S. 2007) has changed the case law and, essentially, deemed cases, such as Teleflex and Lee, with an extremely narrow interpretation of the "teaching, suggestion, and motivation" test inappropriate. This is further shown in Federal Circuit Court rulings since KSR, such as Leapfrog Enterprises Inc. v. Fisher-Price Inc., 82 USPQ2d 1687 (Fed. Cir. 2007), which cited "The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." from the KSR decision on page 1691 and used KSR on page 1692 to support its conclusion that "no evidence that the inclusion of...in this type of device was uniquely challenging or difficult for one of ordinary skill in the art." See Supreme Court decision on KSR Int'l. Co., v. Teleflex, Inc., 550 U.S.–, 82 USPQ2d 1385 (2007). In the instant case, *Labbe* provides motivation to improve *Cheng*'s invention by implementing the ability to schedule tasks during low

machine demand hours, for example: late afternoon or evening hours, see column 6, lines 20-33.

As per the third argument, in response to applicant's argument that reasons for combining *Cheng* and *Labbe* is defective, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, *Labbe* teaches that reservation time period being determined based on a command type of the device command would provide the ability to schedule tasks during low machine demand hours, for example: late afternoon or evening hours, see column 6, lines 20-33.

As per the fourth argument, in response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 3-6, 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng U.S. Patent Application Publication Number: 2003/0005130 A1 (hereinafter referred to as "*Cheng*") and further in view of Labbe et al. U.S. Patent No.: 7,158,938 b2 (hereinafter "*Labbe*".)

5. **Referring to claim 1**, *Cheng* teaches upon receiving a device command from a first host, reserving for the first host a device targeted by the device command and setting a reservation time period for expiration of the reservation **[**see *Cheng* paragraphs 0039, 0046, Reserve command, starting time and ending time and paragraph 0052, expiration of the reservation time period, message types and characteristics**]** however does not clearly set forth the limitation of the reservation time period being determined based on a command type of the device command. *Labbe* teaches the limitation of a reservation time period being determined based on a command type of the device command **[**see *Labbe* column 6, lines 20-33, job information, for example the type of job and the job order quantity to determine how many time slots to reserve**]** in order to provide the ability to schedule tasks during low machine demand hours, for example for late afternoon or evening hours.

One of ordinary skill in the art at the time of applicant's invention would have clearly recognized that it is quite advantageous for the method of *Cheng* to determine the reservation time period based on a command type of the device command in order to provide the ability to schedule tasks during low machine demand hours, for example for late afternoon or evening hours. It is for this reason that one of ordinary skill in the art would have been motivated to implement the limitation of reservation time period being determined based on a command type of the device command to efficiently distribute and manage resources.

6. **Referring to claims 3,** the combination of *Cheng and Labbe* teaches further comprising: upon receiving a device command targeted to the device from a second host, determining if the device is reserved and if the device is reserved to a host other then the second host, denying the deivce command from the second host **[**see *Cheng* paragraphs 0044, 0046, 0047, if any resource is not available, the reservation request fails.**]**

7. **Referring to claim 4**, the combination of *Cheng and Labbe* teaches wherein determining if the device is reserved comprises determining if the reservation time period has expired **[**see *Cheng* column 1, lines 45-59 and column 2, lines 3-14 and column 4, lines 7-38.**]**

8. **Referring to claim 5**, the combination of *Cheng and Labbe* teaches further comprising if the device is not reserved, executing the device command from the second host **[**see *Cheng* paragraphs 0039, 0046, 0052, Reserve command, starting time and ending time.**]**

9. **Referring to claims 6,** the combination of *Cheng and Labbe* teaches wherein the device command from the second host comprises a clear command **[**see *Cheng* paragraphs 0039, 0046, 0052, Release command or Unschedule.**]**

10. **Referring to claims 8,** the combination of *Cheng and Labbe* teaches wherein the device command comprises one of a write command, a rewind command, a read command, a load command, an unload command, and a seek command **[**see *Cheng* paragraph 0047, streaming – i.e., read or load.**]**

11. **Referring to claims 9, 10**, the combination of *Cheng and Labbe* teaches wherein the device command comprises a tape device command, a disk device command, **[**see *Cheng* paragraph 0029, 0032, tape, disk.**]**

12. Claims 2 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Cheng*, *Labbe* and further in view of UK Patent Application No 2379769A filed by Ahmad H Tawil, which was submitted by the applicant as part of the IDS filed on 01/10/2005 (hereinafter referred to as "*Tawil*".)

13. **Referring to claims 2**, the combination of *Cheng and Labbe* teaches upon receiving a device command from a first host, reserving for the first host a device targeted by the device command and setting a reservation time period for expiration of the reservation **[**see *Cheng* paragraphs 0039, 0046, 0052**]** however, does not set forth the limitation of further comprising upon receiving a second device command from the first host, resetting the reservation time period. *Tawil* teaches the limitation of resetting

the reservation time period [see abstract, 'reservation may be released by issuing a reserve out command'.]

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention that it was old and well known in the computer at to get the advantage of allowing a host to reset a memory access period in order to meet the demand of the host process by resetting the reserved time period of the memory access. It would have been obvious to one or ordinary skill in the art the time of applicant's invention implement resetting the reservation time period to get this advantage.

14. **Referring to claims 11**, the combination of *Cheng and Labbe* teaches upon receiving a device command from a first host, reserving for the first host a device targeted by the device command and setting a reservation time period for expiration of the reservation [see *Cheng* paragraphs 0039, 0046, 0052] however, does not set forth the limitation of wherein the deivce command comprises a Small Computer System Interface (SCSI) command. *Tawil* teaches the limitation of using a Small Computer System Interface (SCSI) command [see abstract, SCSI command.]

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention that it was old and well known in the computer at to get the advantage of using SCSI commands in order to allow faster communication and the ability to daisy chain up to seven different devices. It would have been obvious to one or ordinary skill in the art the time of applicant's invention implement Small Computer System Interface (SCSI) command to get this advantage.

Conclusion

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

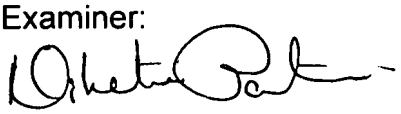
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niketa I. Patel whose telephone number is (571) 272 4156. The examiner can normally be reached on M-F 8:00 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alford Kindred can be reached on (571) 272 4037. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Examiner:



Niketa Patel
9/16/2007